

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
:
UNITED STATES OF AMERICA,
:
- v. -
:
DANIEL B. KARRON,
:
Defendant.
:
- - - - - X

S2 07 Cr. 541 (RPP)

GOVERNMENT'S SURREPLY IN FURTHER OPPOSITION TO
DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL AND
FOR A NEW TRIAL

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

CHRISTIAN R. EVERDELL
CHI T. STEVE KWOK
Assistant United States Attorneys

- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
:
UNITED STATES OF AMERICA,
:
- v. -
:
DANIEL B. KARRON,
:
Defendant.
:
- - - - - x

S2 07 Cr. 541 (RPP)

**GOVERNMENT'S SURREPLY IN FURTHER OPPOSITION TO
DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL AND
FOR A NEW TRIAL**

Pursuant to the Court's Order of September 9, 2008, the Government respectfully submits this surreply in response to arguments in the defendant's reply brief not previously raised in his original motion papers. Like the arguments in the defendant's opening brief, however, none of the defendant's eleventh-hour arguments withstands scrutiny. Accordingly, the Rule 29 and Rule 33 motions should be denied.

POINT I

THE EVIDENCE WAS SUFFICIENT TO CONVICT KARRON

In his opening brief, the defendant argued there was insufficient evidence to support the jury's guilty verdict because of alleged deficiencies in the various audits Joan Hayes and Belinda Riley conducted, because none of the analyses took into account personal contributions by the defendant, and because

there was no requirement that revisions to the ATP budget be made only subject to NIST's prior written approval. (Br. 4-10).¹

As shown in the Government's Opposition, all of these arguments fail. The Government showed that the defendant's quibbles about the various audits are simply irrelevant because the Government proved the misapplication of ATP funds at trial, not through audits that relied on CASI's constantly changing books and records, but through independent financial records supplied by Chase Bank, American Express, and various vendors whose authenticity was never in dispute. (Opp. 22).

Furthermore, contrary to the defendant's unsupported assertion that Belinda Riley's spreadsheets analyzing those financial records overlooked certain personal contributions the defendant made to CASI through direct contributions and foregone salaries, the Government identified specific spreadsheet entries where she took into account precisely the checks and withheld salaries to which the defendant referred. (Opp. 24-25).²

¹ "Tr." refers to the trial transcript; "Br." refers to the defendant's Memorandum of Law in Support of Daniel Karron's Motion for a Judgment of Acquittal, New Trial Pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure; "Opp." refers to the Government's Memorandum of Law In Opposition to Defendant's Motion for a Judgment of Acquittal and for a New Trial; "Reply" refers to the defendant's Memorandum of Law In Reply to the Government's Opposition; "GX" refers to a Government exhibit at trial.

² In his reply brief, while the defendant continues to assert, without any citation to the record, that the "Government's auditor never credited Dr. Karron with these repayments," he makes no attempt to respond to the Government's Opposition pinpointing precisely the spreadsheet entries where

Finally, in response to the defendant's astonishing claim that it "is simply not true" that "significant alterations to the budget required prior approval," (Br. 10), the Government cited testimonial and documentary evidence unambiguously stating that recipients "shall obtain prior written approval from the NIST Grants Officer for . . . [t]he transfer of funds among direct cost categories . . . if the transfer exceeds 10% of the approved total annual budget." (Opp. 2-5, 28-29).

Instead of engaging the Government's response on the merits, the defendant raises altogether new arguments in his reply brief. The defendant now argues that because the money CASI received from the federal government was not made pursuant

the auditor took those selfsame "repayments" or "contributions" into account. (Opp. 9-12).

In this connection, the defendant does add an argument not previously raised in his original papers — i.e., that the defendant was due reimbursement for purchases he made for CASI using his personal MasterCard. (Reply 10). There is nothing in the record to support this claim. Although the defendant sought to introduce a defense expert witness to testify about the MasterCard records, the Court excluded this proffered witness's testimony on grounds of "late notice" and lack of competence. (Tr. 1173). While the Government stipulated to the authenticity of certain MasterCard statements, there was neither stipulation, testimony, nor documentary evidence regarding these credit card statements, much less evidence showing that they demonstrate that the credit card expenses were grant-related, as opposed to personal or non-grant related business expenses, or that the defendant paid for the outstanding balances using non-ATP funds. (Tr. 1176). Hence, at the end of the day, there was nothing to contradict Riley's analysis. The defendant's arguments in his reply brief concerning these MasterCard records are just that — belated arguments unsupported by any competent evidence.

to a "grant," but pursuant to a "cooperative agreement," which involved "substantial involvement . . . between the executive agency [ATP]" and "the recipient during performance of the contemplated activity," (Reply 5), the defendant was entitled to an administrative audit review process during which deviations from the approved budget could somehow be negotiated away. (Reply 4-9).³ The defendant concedes that if the money CASI received was awarded pursuant to a "grant," "the Government's argument would have some merit." (Reply 6). Nonetheless, the defendant argues, the fact that a cooperative agreement was involved in this case made all the difference. (Reply 5). Finally, while the defendant no longer disputes that prior written approval was required before an ATP grant recipient could deviate from his approved budget and that ATP funds could not be used to pay for overhead expenses and sunk costs, he takes issue with the validity of these ATP rules, arguing that if they trumped less stringent regulations in the Code of Federal Regulations ("CFR"), it "would lead to the absurd result whereby

³ The defendant makes this argument notwithstanding defense counsel's characterization of the defendant's ATP award as a "grant" throughout the entire trial (Tr. 40-53, 1276-1316), and notwithstanding the fact that no distinction was drawn between a "grant" and a "cooperative agreement" throughout the whole trial by either party. As shown below, this is because whatever technical distinction there is between these two types of award has no bearing whatsoever on the issues at trial.

ATP grants could be required to be administered in a manner inconsistent with the CFR." (Reply 3).

All of these arguments are meritless. Title 41, Code of Federal Regulations, Section 31.201-2(a), states that "a cost is allowable only when the cost complies with all of the following requirements: . . . (4) Terms of the contract."

Here, the "terms of the contract" were spelled out in the ATP Financial Assistance Award (GX 12) that Dr. Karron signed on behalf of CASI in his capacity as President and Chief Technical Officer. In signing that document, Karron "agrees to comply with the Award provisions checked below and attached," including the following:

- Department of Commerce Financial Assistance Terms and Conditions;
- Special Award Conditions;
- Line Item Budget;
- 15 C.F.R. Part 14;
- 48 C.F.R. Part 31;
- ATP General Terms of Conditions;
- Program Specific Audit Guidelines for ATP Cooperative Agreements with Single Companies.

(GX 12).

As more fully explained in the Opposition, the above-referenced materials make clear that (i) the defendant must obtain NIST's prior written approval before ATP money could be

spent in a way that was inconsistent with the approved budget, where the amount of the deviation exceeded 10% of the total annual budget and (ii) overhead/indirect costs and sunk costs could not be paid for using ATP funds. (Opp. 3-5).

Contrary to the defendant's claim, these ATP rules and regulations do not conflict with existing law. Rather, the governing statute's and the CFR's explicit delegation of authority to ATP, as well the CFR's repeated cross-references to ATP's rules and regulations, leave no room for doubt that ATP was authorized to tailor funding conditions to accomplish the program's objectives. Indeed, this sort of delegated authority is just what one would expect from a program designed to fund high-risk scientific research. See, e.g., 15 U.S.C. § 278n (The ATP "Director shall promulgate regulations . . . establishing procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in this section"); 15 C.F.R. § 295.2(d) ("Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. . . . ATP shall determine the allowability of direct costs in accordance with Federal cost principles."); 15 C.F.R. § 295.10 ("Each award by the [ATP] Program shall contain procedures regarding technical, business, and financial reporting and

auditing requirements to ensure that awards are being used in accordance with the [ATP] Program's objectives. . . . The audit standards to be applied to ATP awards are the Government Auditing Standards . . . and the ATP program-specified audit guidelines"; 15 C.F.R. § 295.7 ("Proposals must be submitted in accordance with the guidelines in the ATP Proposal Preparation Kit.") (all emphases added).

Despite having signed the Financial Assistance Award (GX 12) and thereby "agreed to comply with the Award provisions" set forth in the above-cited materials, the defendant argues for the first time he was actually exempt from these requirements because he received a "cooperative agreement," not a "grant." The defendant says that the "cooperative agreement" in his case gave him a "flexible budget," allowing him, in essence, to spend first and worry about his noncompliance later. (Reply 4-6).

This argument is frivolous. ATP's General Terms and Conditions (GX 2) – a document that applied "to all recipients of the ATP" award (id.) – made clear that all ATP awards, not just the award to Dr. Karron, were in the form of "cooperative agreements," not "grants." Contrary to the defendant's self-serving interpretation of the terms "cooperative agreements" and "substantial involvement," however, these terms mean something altogether different as they are defined in paragraph 6 of the ATP General Terms and Conditions:

6. Substantial Involvement

NIST has selected a cooperative agreement as the funding instrument for this project. Accordingly, the NIST Project Management Team will be substantially involved in the following areas:

a. Approval of go/no go decision points at various project stages before subsequent stages of a project may continue, if specified in the Special Award Conditions;

b. Concurrence with sole source procurement in excess of \$100,000;

c. Approval of key personnel specified in the proposal . . . ; and

d. Approval of changes in Joint Venture membership.

(GX 2, at 1-2).

Nothing in the above lends any support to the defendant's claim that he was given a "flexible budget" with the opportunity to revise the budget entries "after money is spent." (Br. 6). Far from giving the defendant a free pass to ignore his approved budget, ATP's "substantial involvement" in the "cooperative agreement" imposed on the defendant additional obligations to obtain ATP's "approval" and "concurrence" when specified technical and financial issues arose.

Indeed, just two pages after the above-quoted passage, the following requirements are reiterated:

9. Prior Approval Requirements

In addition to the requirements specified in 15 CFR 14.25, Recipient shall obtain prior

written approval from the NIST Grants Officer for the following changes:

a. The transfer of funds among direct cost categories must be approved in advance by the Grants Officer if the transfer exceeds 10% of the approved total annual budget for each single Recipient Recipients are not authorized to create new budget categories without prior approval. The Recipients are not authorized at any time to transfer amounts budgeted for direct costs to the indirect cost line item.

10. Unallowable Project Costs

Those costs that are designated as being unallowable in Chapter 1, Sections C.4 and C.5 of the November ATP Proposal Preparation Kit [which state, among other things, that "[i]ndirect costs for single company recipients are unallowable . . . and must be absorbed by the company"] will be unallowable under this award.

Hence, the clear terms and conditions of the ATP program negate the defendant's willful insistence to his business manager that "I'm the principal investigator and can do anything I want," and NIST would approve the expenditures later because "they loved me." (Tr. 667, 697). To the contrary, the defendant's award, just like other ATP awards, is fully subject to the budgetary and spending constraints established at trial.

Similarly unavailing is the defendant's claim that because he was unexpectedly deprived of a purported "right" to administrative review in which he thought he would have a chance to persuade ATP to accept his fait accompli, no reasonable juror could find that he had the requisite intent to misappropriate federal funds. (Reply 6-9). Contrary to the defendant's claim,

the defendant did not have an absolute "right" to any particular process. The pertinent part of the regulation states:

(a) If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Grants Officer may . . . take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold payments of funds pending correction of the deficiency by the recipient or more severe enforcement action by the Grants Officer after coordination with the DoC [Department of Commerce] operating unit.

(2) Disallow . . . all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

15 C.F.R. § 14.62 (emphases added).

In this case, in light of clear indications of willful and repeated misapplications of federal funds, the Government decided to "take other remedies" – i.e., initiating a grand jury investigation into the defendant's use of ATP funds, including the issuance of multiple grand jury subpoenas for documents and

records. As a result of this criminal investigation, and after the Government and the defendant, through prior counsel, were unable to reach a disposition, the Government sought, and a grand jury in this District returned, an Indictment that began the criminal process. Because the remedy the Government ultimately pursued was judicial and criminal in nature, the defendant was afforded the fuller panoply of rights that attached to a criminal defendant, including the right to a jury trial that he exercised. The choice among possible remedies – administrative, civil, or criminal – was one for the Government to make as the complaining party, not the defendant. So long as the defendant was afforded all the rights “applicable to the action involved,” as he was here, the defendant has no cognizable claim that he was deprived of some other rights “applicable to” other administrative or civil remedies the Government did not pursue.

In any event, as noted in the Government’s Opposition, because the crime of misapplication under 18 U.S.C. § 666 is complete once the defendant misapplied \$5,000 or more in federal funds and did so with the requisite intent, what may or may not happen in a later administrative proceeding is simply irrelevant. (Opp. 25-26). In his reply, the defendant appears to concede the point with respect to a “grant.” (Reply 5) (“What may or may not have happened at the later administrative proceeding is the distinction between a grant and a cooperation agreement. . . .

[If] this were a grant and money was allocated for specific purposes . . . , the Government's argument would have some merit."). The defendant insists, however, that his "cooperative agreement" calls for a different result. As demonstrated above, however, all ATP grants are in the form of "cooperative agreements"; the defendant's award was in accord with the usual arrangement. Because the distinction between a "cooperative agreement" and "grant" is a distinction without a difference with respect to the recipient's rights and obligations under the award, the defendant's concession forecloses his own argument.

Finally, to the extent the defendant argues that his misapplication of federal funds was unintentional and non-willful because he thought, albeit mistakenly, that he would have one last shot at convincing ATP to accept and forgive his violations, the defendant's claim of good-faith belief is undercut by defendant's email to Professor Schwartz unambiguously stating his intention to engage in financial blackmail, not good-faith negotiation as he now claims:

I am weighing abandoning the grant at this point and forcing the government to try to collect 1.4M from me and make the grant enough of a train wreck that they have to cooperate on finding a liveable solution for all of us. It is that bad and I am ready to shove the situation to such a unpalatable end that we get some cooperation from them.

(GX 203, at 3; Tr. 1083-86).

This email does not stand alone. The defendant's claim of good-faith belief is also belied by his multiple attempts to tamper with CASI's books and records, and surreptitiously circumvent the controls put in place by his bookkeeper and both of his business managers. (Tr. 637-41, 840-42, 844, 978-79).

Of course, in a Rule 29 motion, the question is not whether the evidence permits a more innocent inference as to the defendant's intent, but whether the evidence was sufficient to support the jury's factual finding that the defendant did in fact have the requisite intent when he misappropriated federal funds. See, e.g., United States v. Sureff, 15 F.3d 225, 229 (2d Cir. 1994); United States v. Davis, 8 F.3d 923, 928-29 (2d Cir. 1993).

In this case, the above email describing the defendant's intent in his own words; the defendant's decision to strip his business manager Lee Gurfein of his signatory authority exactly one week after ATP funds came into CASI's accounts (Gx 21, at 3; Tr. 639); the defendant's unrelenting attempts to cover his wrongdoing by altering CASI's books over the objections of his bookkeeper (Tr. 844); and the testimony of ATP program managers and the defendant's own employees that they pleaded with the defendant on multiple occasions to stop flouting ATP rules, including Bob Benedict's explicit warning to the defendant that "he could go to jail for this" (Tr. 997), are more than

sufficient to support the jury's finding that when the defendant misapplied federal funds, he did so willfully and intentionally.

POINT II

THE COURT'S JURY INSTRUCTIONS ARE ENTIRELY PROPER

As argued in the Government's Opposition, the Court's jury instructions to the jury are correct in every respect. The law is clear that there is no tracing requirement for prosecutions under 18 U.S.C. § 666 – i.e., the Government need not trace the flow of federal moneys to link them, dollar for dollar, to the misappropriated funds. United States v. Sabri, 541 U.S. 600 (2004). In fact, it is precisely to eliminate the tracing requirement and to enable prosecution of cases, as here, where federal and non-federal funds were co-mingled that Section 666 was enacted in the first place. See United States v. Westmoreland, 841 F.2d 572, 576 (5th Cir. 1988).

Furthermore, every federal court that has considered the issue since Sabri consistently applied Sabri's reasoning to other portions of the statute concerning conduct other than bribery, including Section 666(a)(1)(A) at issue in this case. (Opp. 36-37) (citing cases). In doing so, they rejected precisely the distinction the defendant seeks to draw between bribery and other types of misuse of funds. As the Seventh Circuit stated after analyzing the issue at length in United States v. Spano, 401 F.3d at 840 n.2 (7th Cir. 2005), "we note

that the petitioner in Sabri challenged only § 666(a)(2) and that the defendants challenge § 666 as a whole, having been convicted under, variously, §§ 666(a)(1)(A), (a)(1)(B), and (a)(2). However, we see no reason for any differentiation in analysis among the (a)(1) and (a)(2) charges, which are basically two sides of the same coin." Against this overwhelming authority interpreting § 666 and Sabri, the defendant cites not a single case to support his novel reading of the statute.

Nor did the Court's instruction with respect to the third element (the defendant intentionally misapplied money or property) conflict with the instruction with respect to the fifth element (the value of intentionally misapplied money was at least \$5,000). As the Court correctly noted, there could be no intentional misapplication unless the defendant misspent ATP funds, as opposed to non-ATP money, since ATP rules did not purport to limit how CASI could spend non-grant funds. (Tr. 706). Hence, the Court instructed the jury, with respect to the third element, that "to intentionally misapply money" under the statute means "to intentionally apply the grant money received by CASI in a manner which the defendant knew was unauthorized under the terms and conditions of the grant." (Tr. 1351).

However, once it is shown that \$5,000 or more of ATP funds was misapplied toward unauthorized expenses (here, through a showing that, on net, CASI had no other source of funding aside

from ATP), the Government need not be put to the impossible burden of unscrambling commingled funds and trace the particular sums alleged to be misapplied back to the original grant, dollar-for-dollar. Hence, the Court instructed the jury, with respect to the fifth element, "the government does not have to prove that the particular money misapplied by the defendant was the money received by CASI as a federal grant. In other words, it is not necessary for the government to show that the intentionally misapplied money was traceable to the actual federal grant received by the organization. . . . Money is fungible, and the government need not trace the \$5,000 or more alleged to be intentionally misapplied back to the federal grant." (Tr. 1353).

The Court's jury instructions were legally sound, scrupulously fair to both parties, and suitably tailored to the facts of this case. In his reply brief, the defendant has no coherent response to the Government's arguments or to the authorities cited in the Opposition. The defendant does appear, however, to raise three new arguments.

First, in arguing that the auditor, Belinda Riley, failed to take into account various personal financial contributions the defendant made to CASI, the defendant again makes reference to the defendant's MasterCard records. As explained above, see pp. 2-3 n.2, supra, these MasterCard records pertain to the defendant's personal credit card. The Court

excluded the expert witness proffered by the defense on grounds of late notice and lack of competence. The defendant thus failed to offer any admissible evidence as to whether the MasterCard expenses were related to the ATP research project as opposed to personal or non-ATP related expenses, or how the outstanding credit balances were paid for. In the end, there was no contrary evidence in the record undermining Riley's analysis.

In any event, whether Ms. Riley's analysis was trustworthy and whether the Government met its burden to prove \$5,000 or more in misappropriated funds were factual questions for the jury, which decided the issue in the Government's favor. It is unclear how purported deficiencies in Riley's analysis have anything to do with the correctness of the Court's jury instructions that forms the basis of the defendant's Rule 33 motion for a new trial.

Second, the defendant argues that he is entitled to a new trial because the Court erroneously used the word "grant" instead of "cooperative agreement" in its instructions. (Reply 14). This argument is simply absurd. As an initial matter, it was defense counsel who requested the Court to use the word "grant" and to insert it in the jury instructions to distinguish between ATP and non-ATP funds:

Mr. Rubinstein: Well, would your Honor consider "misapplied grant money"?

. . .

The Court: If you want me to say "the grant money" --

Mr. Rubinstein: Yes.

(Tr. 1196, 1205) (emphases added).

In requesting that the Court insert the word "grant" in the jury instructions at the charge conference, the defendant waived any possible objection to this issue. There can be no "manifest injustice" warranting a new trial when the defendant invited the selfsame alleged error of which he now complains. United States v. Sanchez, 969 F.2d 1409, 1414 (2d Cir. 1992).

In any event, there was no error. As explained above, see pp. 7-9, supra, whatever technical distinction there is between a "grant" and a "cooperative agreement" does not bear on any of the issues at trial and, for the sake of simplicity, was used interchangeably to mean, simply, the ATP award. Furthermore, as discussed at p. 8, supra, the term "cooperative agreement" as defined in the ATP documents does not comport with the self-serving interpretation the defendant now puts upon it.

Third, and finally, citing United States v. Thompson, 484 F.3d 877 (7th Cir. 2007), the defendant claims he is entitled to a new trial because the Court's instruction elevated mismanagement to criminal misapplication. The defendant's reliance on Thompson, a government procurement case, is inapposite. In that case, the defendant was a state official who was charged with steering a procurement contract for traveling

services to an allegedly inferior bidder. Id. at 878. There was no allegation that she received any kickbacks for awarding the contract to her favored bidder, or that her relatives, friends, or associates benefitted from her decision in any way. Id. at 881. Confronted with the question whether any error in applying the procurement rules contrary to state law is a crime, the Seventh Circuit answered no. Id. at 880. The Court explained that the evidence was insufficient to show the requisite intent because Thompson might legitimately have been attracted by the winning bidder's lowest bidding price despite its comparatively poorer services and its lower rankings under other criteria. The Court wrote:

Many a person runs for office on a platform of cutting the cost of government. Bureaucrats may call a preference for low price over high levels of service a form of 'political interference' with their operations . . . but no party has a monopoly on opposing gold-plated wastebaskets and other excesses. Low prices may advance the public interest even if they discomfit public employees, and recognition that driving down the cost of government is good politics for incumbents does not transgress any federal statute of which we are aware.

Id. at 880.

The Court's jury instructions in this case did not conflict with Thompson and, contrary to the defendant's argument, did not construe Section 666(a)(1)(A) as a strict liability statute. In contrast, the Court took pains to inform the jury that, to return a guilty verdict, it must find that the defendant

misused "grant money received by CASI in a manner which the defendant knew was unauthorized under the terms and conditions of the grant" and that the decision was the "product of the defendant's conscious objective to spend the money for an unauthorized purpose." (Tr. 1351-52) (emphasis added).

Furthermore, unlike in Thompson, the overwhelming evidence at trial showed that the defendant personally benefitted from his diversion of ATP funds to pay for, among other things, his mortgage, a cleaning lady for his home, restaurant meals, Starbucks coffee, and miscellaneous household items such as blenders, vacuum cleaners, power drills, and a GPS navigation device. (GX 101, 110, 114, 115).

Finally, the Court's explanation of the term "misapplication" – "wrongful use of the money for a purpose the defendant knew was unauthorized, even if such use benefitted CASI in some way" – was entirely consistent with the Second Circuit's decision in United States v. Urlacher, 979 F.2d 935, 938 (2d Cir. 1992), a case charging a violation of Section 666(a)(1)(A), and Sand's Model Jury Instructions Instrs. 27A-5 and 3A-4.

In sum, the Court did not err in instructing the jury, much less err in a way that gave rise to "manifest injustice" requiring a new trial. Accordingly, the defendant's Rule 33 motion based on the Court's purportedly erroneous jury instructions should be denied.


CONCLUSION

For the foregoing reasons, the defendant's Rule 29 motion for a judgment of acquittal, and his Rule 33 motion for a new trial should both be denied.

Dated: New York, New York
September 15, 2008

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

By: 

Christian R. Everdell
Chi T. Steve Kwok
Assistant United States Attorneys
Tel: (212) 637-2556/2415
Fax: (212) 637-2937

CERTIFICATE OF SERVICE

CHI T. STEVE KWOK deposes and says that he is employed in the Office of the United States Attorney for the Southern District of New York.

That on September 15, 2008, he caused to be served a copy of the foregoing Government's Surreply in Further Opposition to Defendant's Motion for a Judgment of Acquittal and for a New Trial by Federal Express on:

Ronald Rubinstein, Esq.
Rubinstein & Corozzo, LLP
260 Madison Avenue, 22nd Floor
New York, NY 10016
(917) 626-8003

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. Section 1746.



CHI T. STEVE KWOK

Executed on: September 15, 2008
New York, New York